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a pair of sleeves, said blanket defining a pair of sleeve apertures in the half-portion of said blanket adjacent to said top edge of said blanket, each of said sleeve apertures being disposed close enough to each other to provide for the anterior insertion of the user's arms, each of said sleeve apertures having an oblong shape for facilitating improved freedom of arm movement within said sleeve, and each of said pair of sleeves including a first end and a second end, the first end of each sleeve being connected to the perimeter of the respective sleeve apertures on said blanket for receiving the user's arms when inserted anteriorly relative to the user.

Remarks/Arguments

Claims 1 through 12 are pending in this application.

Claims 1 – 12 are rejected.

Claims 1-4, 8, 10, and 12 are cancelled.

Claim 5 has been amended.

Claim 13 has been added.

35 U.S.C. § 112

Claim 12 stands rejected for reciting the limitation with insufficient antecedent basis for this limitation in the claim. Applicant acknowledges the rejection without traverse. Claim 12 has been cancelled.

35 U.S.C. § 102

Claims 1-2 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,919,721 to Earhart. Applicant acknowledges without traverse. Claims 1 and 2 have been cancelled accordingly.

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35 U.S.C. § 103

Claims 3 and 4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,919,721 to Earhart. Applicant acknowledges the rejection without traverse. Claims 3 and 4 have been cancelled accordingly.

Claims 5-11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,919,721 to Earhart in view of U.S. Patent No. 6,219,847 to Aikins. Applicant respectfully traverses.

To rely on a reference under 35 U.S.C. § 103 there must be analogous prior art.

In order to rely on a reference as a basis for a rejection of an Applicant's invention, the reference must either be in the field of Applicant's endeavor or if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.

In this case the Aikins patent is not prior art, nor is it analogous prior art. The Aikins reference is in a different field than the Applicant's endeavor. Aikins is directed to cocoon bag-like garments, in contrast to the Applicant's field of invention relating generally to blankets. (Application p.1, I.3)

Additionally, the Aikins reference is not reasonably pertinent to the particular problem with which the inventor was concerned. The inventor was interested in problems arising from blankets used in a seated or standing. (Application p.1, II.4-5) The significant differences in structure and function and the corresponding problems presented by a blanket differ significantly from those of a cocoon or bag-like garment. A blanket of the present invention lacks the structure of a yoke and its supporting function provided by a cocoon bag. Another structural and functional significant difference is the blanket laying flat over the anterior of the user, compared to a cocoon garment with a tubular body continuously extending over the shoulder and around the torso without a means for adjustment. The cocoon garment of the Aikins reference would provide more problems not solutions. The inventor addresses the problem faced by some stiff or

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relatively immobile blanket users in a nursing home who are forced to depend upon and wait for support staff assistance to cover their legs and feet repeatedly. An elderly, stiff or relatively immobile patient cannot or may find it extremely difficult to fit into a cocoon bag. A cocoon construction poses more problems, not solutions, than the known blanket constructions which employ the full, wrap-around design, because they are extremely troublesome with wheelchair, bedridden or incontinent users. (Application p.2, ¶ 1) There are significant structural and functional differences that pose different problems between a garment having a cocoon shape with a fixed back continuously connected to the front garment in contrast to a blanket with no back piece at all.

Regarding claim 5, Earhart fails to disclose additional claim limitations of the applicants besides failing to disclose a pair of sleeves. Moreover, even if Earhart was considered in combination with Aikins for purposes of argument, neither Earhart alone nor Earhart and Aikins together show the limitation in base claim 1 from which claim 5 depends, said pocket panel coinciding with the middle third portion of the blanket and the bottom edge of said blanket....

Earhart '721, Aikins '847, Aliff '873, Newhaller Des. 417,767 and Rudy 5, 245,717 considered individually or together in combination fail to suggest or teach the claim 5 limitation of sleep apertures "has an oblong shape for facilitating improved freedom of arm movement within said sleeve." Moreover, the same patents considered alone or in combination fail to show the claim 6 limitation of "an oblong-shaped aperture has an oblique orientation relative to a horizontal center line to facilitate freedom of arm movement."

The significance of the patentable differences provided by those claimed limitations over the prior art and even over the nonprior work of Aikins may be appreciated by a closer comparison between the present claimed invention and Rudy '717. The object of the Rudy '717 invention is to provide a "relaxation article." Consequently, the sleeve apertures can be and specifically are circular as shown in Rudy Figure 2 reference nos. 121 and 111. The sleeves are designed not to impede

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circulation should the person fall asleep. A cuff "may be " or may not be present. The relaxation article is adapted to cover at least the upper body portions of the user reclining in a bed, easy chair, or the like.

Instead of a relaxation article, the object of the present invention is for significantly different and more active wear by an elderly, semi-immobile user. The present claimed limitations including the oblong sleeve apertures and the oblique orientation are structural differences that accomplish the different objects of the present invention. The oblong sleeves and oblique orientation accommodates a wider range of arm movement. That benefit is especially important for elderly users being moved into and out of a wheelchair as well as activities in a wheelchair. The oblong sleeve apertures and oblique orientation enables a "one size fits all" to handle all sizes and shapes of people. The claim features also provide an easier way of putting on and taking off the invention for wheelchair and hospital-bound people. The oblong sleeve apertures and oblique orientation provide thermal control by allowing full or half sleeve use depending on the warmth desired. The oblong sleeve apertures and oblique orientation also improve mobility for the user by expanding the range of activities permitted under a blanket without the problem of binding and pulling.

The expandable cuff feature in the claim limitation accomplishes the following objects of the invention. The expandable cuffs provide for keeping the blanket from falling off the elderly user. The expandable cuffs accommodate narrow and wide wrists and slender or swollen, arthritically gnarled fists. The expandable cuffs reduce the inconvenience of lost self-sufficiency in a hospital or nursing home setting by staying on the user.

Thus, the Rudy relaxation article is designed for use in a passive mode, while the present invention is designed for use in an active mode. The circular sleeve apertures taught in Rudy are suitable in a passive mode, but are unsuitable to accomplish active mode objects of the present invention. Those claim limitations are patentably significant differences for facilitating the activity of hospital patients and nursing home residents.

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The users can accomplish a wider variety of actions without being impaired by the blanket.

Contrary to the Examiner's assertion on page 4 that Aikins discloses a blanket, Aikins discloses a cocoon garment. Also, Aikins does not inherently have oblong apertures. Not only does Aikins fail to teach a particular shape for the arm aperture, it appears to the Applicant that the sleeve aperture may be substantially circular, similar to the substantially circular shape of an arm. It would not have been obvious to one having ordinary skill in the art at the time of the invention to employ sleeves in order to cover the arms of the user because the blanket itself without sleeves would be covering the arms of the user.

Regarding claim 6, the sleeve aperture having an oblique orientation relative to the horizontal centerline is not anticipated by the substantially vertical orientation relative to the horizontal center line of the sleeve aperture in Aikins.

Regarding claim 7, Aikins fails to teach, expressly or inherently, any particular shape or any particular orientation. A circular shape orientation would have no vertical or horizontal orientation.

Regarding claim 8, Applicant concedes that Aikins discloses a cuff, but not an expandable cuff 17.

Regarding claim 9, the sleeve aperture shown in Aikins reference are spaced further apart along the horizontal center line than that recited in claim 9. It would, consequently cause the blanket across the chest to bunch up instead of lie flat across the chest of the user.

Regarding claim 11, the ^{patentable} ~~unpatentable~~ features discussed in earlier claims apply equally well to this claim. Earhart fails to disclose a number of claimed limitations, including sleeves and sleeve aperture features. Aikins is not prior art nor analogous

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prior art. Even if Aikins were considered in combination with Earhart, the number of sleeve aperture features limitations is not shown.

Reference lacks the inherent feature recited by the claim limitation.

Regarding the alleged obviousness by the Aikins patent, on its face the Aikins patent does not disclose or discuss the claim 5 limitation of a pair of sleeve apertures 40, 50, each having an oblong shape for facilitating and improving freedom of arm movement within the sleeve. The Examiner maintains that this application merely claims a preexisting property inherent in the structure disclosed in the prior art. The Examiner urges us to accept the proposition that if a prior art reference discloses the same structure as claimed by a patent, a sleeve aperture, the resulting property, in this case a sleeve aperture having an oblong shape, should be assumed. We respectfully disagree with this approach because this proposition is not in accordance with the Court of Appeals of Federal Circuit cases about inherency. If the oblong shape limitation is inherently disclosed by the Aikins patent, it must be necessarily present and a person of ordinary skill in the art would recognize its presence. in re Robertson 169 F 3d 743, 745, 49 U.S.P.Q. 2d 1949, 1950-51 (Fed. Circ. 1999); Continental Can, 948 F 2d at 1268, 20 U.S.P.Q. at 1749. Inherency "may not be not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." Id at 1269, 20 U.S.P.Q. 2d at 1749 (in re Oelrich, 666(f) 2d 578, 581, 212 U.S.P.Q. 323, 326 (CCPA 1981)). In arguing inherent disclosure of the oblong shape of the sleeve aperture in the Aikins patent, the Examiner bears an evidentiary burden to establish that the limitation was necessarily present. It is respectfully submitted that the Examiner has failed to meet its burden because it has not presented sufficient evidence of such.

Examiner has not demonstrated a suggestion to combine the Earhart patent with the Aikins patent and thus, cannot rely upon such a combination to show obviousness.

As stated above, the Examiner argues claims 1-11 are invalid because they are obvious in view off the combination of the Earhart '721 patent with the Aikins patent

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'847. Specifically, Examiner argues that the application should be declared invalid because it would have been obvious for one of ordinary skill in the art to combine the blanket structure utilized in the Earhart '721 patent with the sleeves and features of the Aikins '847 patent. Applicant respectfully disagrees.

Where a finding of obviousness depends on a combination of prior art references, there must be some teaching, suggestion or motivation to combine the references. Ecolocem, Inc., 227 F. 3d at 1372; Uniroyal, Inc., 837 F 2d at 1051. The reason, suggestion or motivation to combine must be found explicitly or implicitly: 1) in the prior art itself; 2) in the knowledge of those of ordinary skill in the art that certain references are of special interest or importance in the field; or 3) from the nature of the problem to be solved. Ruiz v. A.B. Change Co., 234 F 2d 654, 665 (Fed. Circ. 2000). The showing of "combinability" must be "clear and particular." There must be some teaching or suggestion to "look to particular sources, to select particular elements, and to combine them as combined by the inventor." Crown Operations International, Ltd. v. Solutia, Inc., 2002 WL 976249, & 6 (Fed. Circ. 2002).

Examiner contends that the Earhart '721 patent expressly suggests the lap blanket structure of Earhart discloses all the Applicant's claimed limitation except for a pair of sleeves and their corresponding limitations. In support of this argument, Examiner points to nothing. The Examiner has failed to put forth evidence that any language cited, cited alone, would suggest to a person of ordinary skill in the art that the Earhart '721 patent suggested to a person of ordinary skill in the art that the Earhart patent should be combined with the Aikins '847 patent.

There are several reasons to believe that the Earhart language does not suggest combining the Earhart '721 patent with the Aikins '847 patent. The language of the Earhart '721 patent lacks any express reference to the Aikins '847 patent or any other similar type work. Second, the invention in the Earhart '721 patent comprises a generally rectangular section of blanket material 10 (col. 1, ll. 46-48). The blanket of the present invention is a wearable throw. The application-mentioned blanket was

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specifically designed to be draped, not stepped into. One of the application objects is directed toward meeting the needs of the elderly and wheel chair-bound sector of the marketplace. The elderly, semi-immobile users explicitly need a wearable throw, not a cocoon, wrap or bag. The major functional and structural difference with the Aikins '847 patent from the application and the Earhart '721 patent is that the Aikins invention with a cocoon offers two ways to enter the garment, first by crawling into the slit and bringing the cocoon over the user's head and secondly, with the use of a restrictive collar with a snap or Velcro. Both ways of putting on the cocoon are contrary to the purpose of the wearable throw blanket. Instead of a flat blanket, the Aikins invention has a tubular body. Instead of being able to walk with a wearable throw blanket, as provided by this application, the device in the Aikins patent cocoon invention severely limits range of walking. The Aikins '847 patent necessitates that the user remove himself from the longitudinal "slit" in order to stand up and walk normally. The accumulated amount of significant differences in structure, function and use between the blanket in the Earhart '721 patent and the cocoon bag-like structure in the Aikins '847 patent lead to the conclusion that the Earhart patent or any other legitimate cited prior art would not have suggested to a person of ordinary skill in the art that the Earhart '721 patent be combined with the Aikins '847 patent.

As for amended claim 5, Earhart fails to teach, expressly or inherently, any sleeves on the blanket or the sleeve limitations. The Aikins patent is not a prior art reference for this claim either.

Regarding new claim 13, Earhart fails to teach, expressly or inherently, any sleeves on the blanket or the sleeve limitations. The Aikins patent is not a prior art reference for this claim either. However, for argument's sake, Earhart combined with Aikins still fail to teach a blanket having sleeves with sleeve apertures disposed close enough to each other to provide for the insertion of the user's arms **anteriorly** into the sleeves. The Aikins reference discloses sleeve apertures for inserting the user's arms **laterally** through the sleeve apertures.

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Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version with markings to show changes made."

CONCLUSION

On the basis of the foregoing amendments, remarks and papers of record, Applicant respectfully submits that the remaining claims 5, 6, 9, 11, and 13 are now in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

CLAIMS

5 (amended) A pillow blanket for covering from neck to feet a user in an upright position, said pillow blanket comprising:

a substantially rectangular blanket having a planar first surface and a planar second surface, said blanket having two opposing first and second side edges and two opposing top and bottom edges which are shorter than said two opposing side edges, said blanket having a middle third portion; [and]

a foot pocket comprising a pocket panel having two opposing first and second edges and two opposing top and bottom edges, said pocket panel being connected to said blanket at said first edge, second edge and bottom edge of said pocket panel, said bottom edge of said pocket panel coinciding with both the middle third portion of said blanket and the bottom edge of said blanket for warming feet and for converting the blanket into a pillow; and

[The pillow blanket of Claim 1 further comprises] a pair of sleeves, said blanket defin[es]ing a pair of sleeve apertures in the half portion of said blanket adjacent to said top edge of said blanket, each of said sleeve apertures has an oblong shape for facilitating improved freedom of arm movement within said sleeve, and each of said pair of sleeves includes a first end and a second end, the first end of each sleeve is connected to the perimeter of the respective sleeve aperture on said blanket.

021114 Response to Office Action as filed